

STATEMENT OF CONSIDERATION RELATING TO

401 KAR 5:055 Amended after comments
401 KAR 5:060 Amended after comments
401 KAR 5:065 Amended after comments
401 KAR 5:080 Amended after comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water

I The public hearing on 401 KAR 5:002, 5:005, 5:055, 5:060, 5:065, and 5:080, scheduled for May 27, 2009, at 10:00 a.m. at 300 Fair Oaks Road, was held and written comments were received during the public comment period.

II The following people attended the hearing:

<u>Name and Title</u>	<u>Affiliation</u>
Teena Halbig, Vice President	Floyds Fork Environmental Association
Jack Bender	Kentucky League of Cities
Hank Graddy, Attorney	Graddy and Associates
Aloma Dew, Regional Representative	Sierra Club
David Kaelin, Conservationist	
Betsy Bennett, Conservation Chair	Sierra Club, Cumberland Chapter
Joan Lindop	
Rick Clewett	Sierra Club

The following people submitted written or verbal comments:

<u>Name and Title</u>	<u>Affiliation</u>
Teena Halbig, Vice President	Floyds Fork Environmental Association
Gene Nettles	
Bob Weiss, Executive Vice President	Home Builders Association of Kentucky
Aloma Williams Dew, Organizer	Sierra Club
Lloyd R. Cress, Jr.	Kentucky Association of Manufacturers
Timothy J. Hagerty, Chair, Environmental Policy Committee	Kentucky Chamber
Laura Knoth, Director, Public Affairs Division	Kentucky Farm Bureau Federation

Emily Harkenrider	Legislative Research Commission
Jack Bender	Kentucky League of Cities
Tom FitzGerald, Director	Kentucky Resources Council
Gay Dwyer, Senior Vice President for Government Affairs	Kentucky Retail Federation
Hank Graddy, Chair	Kentucky Watershed Watch
Betsy Bennett and Wallace McMullen, Conservation Chairs	Sierra Club, Cumberland Chapter

III The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Peter Goodmann, Assistant Director	Division of Water
Jory Becker, Branch Manager	Division of Water
Larry Sowder, Supervisor	Division of Water
Abby Powell, Regulations Coordinator	Division of Water

IV Summary of Comments and Responses (General)

(1) Subject Matter: Technical Amendments

(a) Comment: Emily Harkenrider (Legislative Research Commission) Ms. Harkenrider suggested several technical amendments to the regulations, including formatting, grammar, and drafting suggestions.

(b) Response: The agency agrees and has made the suggested changes.

(2) Subject Matter: Public Notice and Public Hearing

(a) Comment: Teena Halbig (Floyds Fork Environmental Association), Gene Nettles, Hank Graddy (Kentucky Watershed Watch), Aloma Dew (Sierra Club)

The commenters believe that there was not adequate opportunity to comment on the proposed amendments to the administrative regulation and that the public hearing was at an inconvenient time and violated the spirit of the Kentucky Open Meetings Laws.

(b) Response: The cabinet tries to make reasonable accommodations for the public to be included in the process; however, budgetary considerations have made it necessary to hold some meetings during work hours. The agency sent notice on April 15, 2009, via US mail, e-mail, and internet posting that regulations were filed on April 14. The notice included the date and time of public hearing and contact information necessary for submitting written comments. The agency met all the requirements of KRS 13A for the public process.

(3) Subject Matter: Statutory Authority

(a) Comment: Tom FitzGerald (Kentucky Resources Council)

KRS 224.10-110 should be added to the statutory authority section for each regulation.

- (b) **Response:** The agency agrees and has made the change.
- (4) **Subject Matter: Support for citing federal definitions**
- (a) **Comment: Betsy Bennett (Sierra Club), Hank Graddy (Kentucky Watershed Watch)**
Sierra Club and Kentucky Watershed Watch generally support striking the narrative from Kentucky's regulations and simply referencing the federal citations.
- (b) **Response:** The agency appreciates the support of Sierra Club and Kentucky Watershed Watch.
- (5) **Subject Matter: Water pollution trading**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
Floyds Fork Environmental Association states that water pollution trading has been advocated by the Division of Water and would have a negative impact on Kentucky's waterways.
- (b) **Response:** There is nothing in the proposed amendments to these administrative regulations that would promote water pollution trading.
- (6) **Subject Matter: Air pollution**
- (a) **Comment: Gene Nettles**
To have a permit system for animal feeding operations that ignores an item literally as plain as the nose on your face - odors - goes beyond the pale. The DOW can argue that CAFO permits are water permits with a SOP towards air quality stating the permits are not nuisance permitting. Even a cursory examination of the past effects of acid rain on our plants and streams should be sufficient reason for DOW to include an air quality component in permits for animal feeding operations. The acid in acid rain came because of hydrogen sulfide like that coming from a CAFO.
- (b) **Response:** This regulation serves to protect water quality from activities at permitted facilities. The Division of Water does not regulate air emissions from these facilities.
- (7) **Subject Matter: Using federal citations**
- (a) **Comment: Lloyd Cress (Kentucky Association of Manufacturers), Timothy Hagerty (Kentucky Chamber), Laura Knoth (Kentucky Farm Bureau Federation), Tom FitzGerald (Kentucky Resource Council)**
Kentucky Association of Manufacturers, the Kentucky Chamber, and Kentucky Farm Bureau Federation support the use of federal regulations in Kentucky's delegated programs. Kentucky Resource Council opposes using the citations, but suggests that if the agency decides to use this method, it provide a web site with links to current federal regulations.
- (b) **Response:** The agency acknowledges the comment and believes that using federal citations will allow the agency to keep up with federal revisions and precludes the division from issuing federal permits that are inconsistent with federal law. This method will also allow the agency to maintain consistency with KRS. In order to assist the general citizenry, the regulated community, and other interested parties, the agency intends to develop a "cross-walk" of links to be published on its' website in the future.

- (8) **Subject Matter: “Evergreen” citations to federal regulations**
- (a) **Comment: Bob Weiss (Home Builders Association of Kentucky), Lloyd Cress (Kentucky Association of Manufacturers), Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber), Laura Knoth (Kentucky Farm Bureau Federation), Gay Dwyer (Kentucky Retail Federation)**
 The commenters object to citing federal regulations without an effective date.
- (b) **Response:** The agency has added effective dates for the cited federal regulations.
- (9) **Subject Matter: “Waters of the Commonwealth” vs. “Waters of the United States”**
- (a) **Comment: Bob Weiss (Home Builders Association of Kentucky), Lloyd Cress (Kentucky Association of Manufacturers), Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber), Laura Knoth (Kentucky Farm Bureau Federation)**
 Reference to “Waters of the Commonwealth” as a substitute for “Waters of the United States” is inappropriate. The definition of Waters of the Commonwealth is much broader and exceeds the intent of the Clean Water Act and its related regulations. The federal definition of Water of the United States is more appropriate for use in these regulations.
- (b) **Response:** In addition to implementation of the Clean Water Act through delegation of authority from the Environmental Protection Agency, KRS 224.70-100 requires that the Cabinet protect the Waters of the Commonwealth. Please see the cabinet’s response to comment (20).
- (10) **Subject Matter: Federal laws being challenged**
- (a) **Comment: Aloma Dew (Sierra Club), Betsy Bennett (Sierra Club)**
 Sierra Club representatives caution the agency against promulgating regulations based on federal rules that are being challenged and may be overturned.
- (b) **Response:** The memorandum of understanding with EPA requires the agency to promulgate regulatory updates within twelve months of the final federal rule. If the federal regulations change, the agency believes that the current strategy of citing the federal regulations, instead of narrative, will allow the regulations to be updated more easily to reflect any change.
- (11) **Subject Matter: Using recent reports to guide development of regulations**
- (a) **Comment: Aloma Dew (Sierra Club), Betsy Bennett (Sierra Club)**
 Sierra Club representatives cite several recent reports and studies documenting the harm that CAFOs can cause the environment and public health, including a GAO report and a report from the Pew Charitable Trusts and Johns Hopkins Bloomberg School of Public Health. Sierra Club encourages the agency to promulgate regulations based on current research instead of failing and challenged federal standards.
- (b) **Response:** KRS 224.10-100 prohibits the agency from developing a program that is more stringent than the federal law, and the Clean Water Act prohibits states from developing a program that is less stringent than federal law. If the federal regulations change, the agency believes that the current strategy of citing the federal regulations, instead of narrative, will allow the regulations to be updated more easily to reflect any change.

Summary of Comments and Responses for 401 KAR 5:055

(12) **Subject Matter: Scope of KPDES permitted activities**

(a) **Comment: Gay Dwyer (Kentucky Retail Federation)**

Kentucky Retail Federation notes that existing language limiting the scope of the KPDES program has been deleted from the regulation. Is the scope of activities requiring a KPDES permit being expanded and if so, what activities are being added?

(b) **Response:** The change in the regulation is not an expansion of the scope of the program; it is simply a change in style, using federal citations instead of reproducing the narrative.

(13) **Subject Matter: Drafting suggestion**

(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**

Kentucky Resources Council suggests that Section 2(1) be rewritten to state that “A KPDES permit is required to discharge. . .” Section 2(3) should be rewritten to refer to the discharge, which is the jurisdictional activity: “Failure to obtain a KPDES does not relieve a discharger whose discharge is subject to the

(b) **Response:** The agency agrees and has made the change.

(14) **Subject Matter: Requirement to obtain an individual permit**

(a) **Comment: Tom FitzGerald (Kentucky Resources Council), Bob Weiss (Kentucky Home Builders Association)**

Section 3(2) allows the agency too much discretion in determining that a facility must obtain an individual permit, rather than a general permit. The standards for revoking general permit coverage should be clarified.

(b) **Response:** Section 3(4)(a) gives further clarification of what factors the agency considers when requiring an individual permit instead of a general permit. These considerations are consistent with the federal requirements for the surface water permitting program. In addition, the general permits themselves provide more clarification on who may be eligible for coverage under the general permit.

(15) **Subject Matter: “Designation”**

(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**

It is unclear what “designation” is being referenced in Section 3(3)(b).

(b) **Response:** The agency agrees and has changed “designation” to “permit determination”.

(16) **Subject Matter: General Permit while waiting for determination**

(a) **Comment: Bob Weiss (Home Builders Association of Kentucky)**

Home Builders Association requests that the following language be inserted to Section 3(3): *The permittee’s general permit shall remain in effect until a final resolution of the issue is decided at the conclusion of the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-20(2).*”

(b) **Response:** The general permit developed in accordance with 401 KAR 5:055 Section 8 must contain the eligibility requirements for coverage under the general permit. Since the agency would be requiring an individual permit based on determination that a project was ineligible for coverage under the general permit, the agency cannot insert the suggested language. The suggested amendment would be less stringent than federal requirements and would conflict with 40 CFR Part 122.28.

- (17) **Subject Matter: Individual permit application requirement**
- (a) **Comment: Lloyd Cress (Kentucky Association of Manufacturers), Gay Dwyer (Kentucky Retail Federation)**
Section 3(4) appears to give the cabinet the authority to require a discharger subject to a general storm water permit to submit an application for an individual permit prior to the cabinet's determination that an individual permit is necessary. To force someone to incur that cost before the agency even determines that the storm water discharge requires an individual permit, rather than being covered by a general permit, creates an unfair and unnecessary burden.
- (b) **Response:** The agency agrees and has removed the authority for the cabinet to require an application for an individual permit before a determination is made that the individual permit is necessary.
- (18) **Subject Matter: Drafting suggestion for Section 3(4)(a)**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Kentucky Resources Council suggests that "shall be required" be replaced with "is required".
- (b) **Response:** To comply with the drafting requirements in KRS 13A, the agency uses "shall be" to indicate a requirement.
- (19) **Subject Matter: History of noncompliance**
- (a) **Comment: Bob Weiss (Home Builders Association of Kentucky)**
Home Builders Association asserts that an applicant's history of noncompliance should not be a factor in whether that applicant will receive coverage under a general permit.
- (b) **Response:** The agency believes that if an applicant has a history of noncompliance, additional controls are necessary to adequately address the permitted activities. General permits, by nature, cannot be tailored to the specific needs of such an applicant; therefore, an individual permit is required. 40 C.F.R. 122.28 provides the cabinet a basis to consider other relevant factors, including a history of noncompliance, when issuing general permit coverage.
- (20) **Subject Matter: Exclusions**
- (a) **Comment: Lloyd Cress (Kentucky Association of Manufacturers), Timothy Hagerty (Kentucky Chamber), Jack Bender (Kentucky League of Cities)**
The existing regulation contains a provision that excludes "discharges which are not regulated by the US EPA under CWA Section 402, 33 USC Section 1342" from the applicability section of the regulation. KAM requests that this provision be reinserted into the proposed amendments at Section 4.
- (b) **Response:** To be certain all exclusions are identified, the citation to 33 U.S.C. 1342 has been added to Section 4.

- (21) **Subject Matter: Underground Injection Control Wells**
(a) **Comment: Lloyd Cress (Kentucky Association of Manufacturers), Timothy Hagerty (Kentucky Chamber)**
Reference is made to underground injection activities in Section 4 and Section 9. Kam and The Chamber remind the agency that it does not have authority to issue permits pursuant to the federal UIC program. They request that the regulation be clarified to state that the agency does not regulation underground injection activities under the KPDES program.
(b) **Response:** The agency agrees that the regulation does not provide authority for the federal UIC program, which is regulated under the Safe Drinking Water Act, not the Clean Water Act. 40 C.F.R. 122.50 provides the authority pursuant to the NPDES program to issue permits to dischargers.
- (22) **Subject Matter: Prohibitions for a KPDES permit**
(a) **Comment: Timothy Hagerty (Kentucky Chamber)**
The provisions of Section 5 paraphrase 40 C.F.R. 122.4 and add other prohibitions, such as violation of KRS 224. Kentucky Chamber suggests that the additional prohibitions be struck and that the regulation simply cite the federal regulation.
(b) **Response:** The agency believes that it would violate statute to issue a permit that would violate state law (including KRS 224) or would cause violations of standards of adjacent states or interstate pollution control agencies sharing the same water bodies. The additional prohibitions found in Section 5 are necessary to lawfully administer the program.
- (23) **Subject Matter: Prohibition against violating KRS 224**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Kentucky Resources Council suggests that Section 5(1) be revised to prohibit issuance if the conditions of the permit violate K.R.S. 224 **and** if the issuance **without** conditions would violate K.R.S. Chapter 224.
(b) **Response:** The agency agrees that the absence of required conditions in the permit may be as problematic as the presence of conditions which are contrary to KRS 224. The agency has clarified the language in the amended regulation.
- (24) **Subject Matter: Changing water quality standards**
(a) **Comment: Timothy Hagerty (Kentucky Chamber)**
The Kentucky Chamber asks that the provision in Section 7 confirm that the effect of a permit extends to counterpart state regulations, including water quality standards enforceable through KPDES permits.
(b) **Response:** The agency is bound to enforce water quality standards, which are developed independently of permits. If a standard changes, the agency has the authority to incorporate the new water quality standard through the permitting process.

- (25) **Subject Matter: Incorrect reference in 5:055, Section 10**
(a) **Comment: Timothy Hagerty (Kentucky Chamber)**
The Kentucky Chamber identifies the reference to 401 KAR 5:080 Section 3 as inaccurate.
(b) **Response:** The agency agrees and has changed the citation to Section 2.
- (26) **Subject Matter: Drafting suggestion for Section 11**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
In Section 11(2) and (3), the phrase “if the cabinet has delegated authority in the federal regulations” should be rewritten for clarity to state “if the authority to administer the federal regulation cited in Section 1 through 10 of this administrative regulation has been delegated to the cabinet.”
(b) **Response:** The agency agrees and has made the suggested change.

Summary of Comments and Responses for 401 KAR 5:060

- (27) **Subject Matter: Statutory Authority**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Reference to the federal regulations should be eliminated and replaced with the federal statutory sections that authorized the promulgation of those regulations by EPA and the state statutory authority for the cabinet to issue permits pursuant to and in conformity with those federal statutes and regulations.
(b) **Response:** After working with the analysts at the Legislative Research Commission, the agency believes the federal regulations cited in the statutory authority section are appropriate. These federal regulations give the parameters of the program.
- (28) **Subject Matter: Discharging without a permit**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Kentucky Resources Council believes that Section 2(2)(a) should be clarified that no discharge shall occur prior to obtaining a permit authorizing the discharge, and that a person discharging without a permit is subject to appropriate enforcement action and shall cease any discharge until the permit is obtained.
(b) **Response:** The language in Section 2(2)(a) is consistent with 40 CFR 122.21. An applicant who is found to be discharging without a permit is in violation of federal and state regulations and is subject to enforcement action.
- (29) **Subject Matter: Section 11 (2) and (3), drafting suggestion**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
The phrase “if the cabinet has delegated authority in the federal regulations” should be rewritten for clarity to state “if the authority to administer the federal regulation cited in Section 1 through 10 of this administrative regulation has been delegated to the cabinet.”
(b) **Response:** The agency agrees and has made the suggested change to the amended regulation

- (30) **Subject Matter: Correction to Section 11(4)**
 (a) **Comment: Timothy Hagerty (Kentucky Chamber)**
 The reference to Section 1(a) in Section 11(4) is not accurate.
 (b) **Response:** The agency agrees and has changed the reference to Section 2(2)(b).
- (31) **Subject Matter: E. coli as a substitute for fecal coliform**
 (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
 Section 11(5): The RIA and other narrative documentation accompanying this change do not provide an explanation of the substitution, and the MIR is not consistent with the text of the regulation, since according to the explanation of KPDES Forms A, C, and SC, *either* fecal coliform *or* E. coli can be reported. Using E. coli as an indicator may be better for recreational water quality but may not be an adequate indicator regarding fish and shellfish contamination. Further research should be undertaken before eliminating a broad spectrum indicator for one coliform specie.
 (b) **Response:** The agency agrees that there is an inconsistency with the text of the regulation and the forms, and the referenced section has been removed from the amended regulation.
- (32) **Subject Matter: Federal Mandate Analysis**
 (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
 Floyds Fork Environmental Association requests that the agency provide a response to the Federal Mandate Analysis Comparison, Question 5.
 (b) **Response:** Questions 5 calls for “Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.” The agency responded to question 4 that there are no stricter requirements than those mandated by federal law. KRS 224.10-100 prohibits the agency from developing a program that is more stringent than the federal law, and the Clean Water Act prohibits states from developing a program that is less stringent than federal law.

Summary of Comments and Responses for 401 KAR 5:065

- (33) **Subject Matter: Interstate regulatory compact, KRS 224.18100**
 (a) **Comment: Bob Weiss (Home Builders Association of Kentucky)**
 Reference to an obscure Interstate Regulatory Compact (KRS 224.18-100) should be removed from the “Relates To” section. Kentucky’s program is managed through EPA in Washington and is difficult enough to keep up with and manage without adding another layer of regulatory interface.
 (b) **Response:** The agency must comply with Kentucky statutes, including KRS 224.18-100. As member of ORSANCO, Kentucky must assure that discharges to the Ohio River do not cause adverse impacts on its usage by other member states.

- (34) **Subject Matter: Drafting suggestion for Section 3**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
The phrase “if the cabinet has delegated authority in the federal regulations” should be rewritten for clarity to state “if the authority to administer the federal regulation cited in Section 1 through 8 of this administrative regulation has been delegated to the cabinet.”
- (b) **Response:** The agency agrees and has made the suggested change in the amended regulation.
- (35) **Subject Matter: Penalties under federal law**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
In Section 3(4), the cabinet should not give up the possibility of seeking penalties under federal law by conceding that state law penalties are a substitute for federal sanctions.
- (b) **Response:** The agency has deleted the provision of Section 3(4).
- (36) **Subject Matter: Interstate Agency Requirement**
- (a) **Comment: Bob Weiss (Home Builders Association of Kentucky), Lloyd Cress (Kentucky Association of Manufacturers), Jack Bender (Kentucky League of Cities), Timothy Hagerty (Kentucky Chamber), Laura Knoth (Kentucky Farm Bureau Federation)**
The commenters object to the provision in Section 3(5) (amended to subsection 4), that states, “*In addition to applicable requirements. . . the requirements of interstate agencies shall be applied to permits issued by the cabinet*”. Commenters question the authority to add such a provision and believe it may contravene state law.
- (b) **Response:** The agency must comply with Kentucky statutes, including KRS 224.18-100. As member of ORSANCO, Kentucky must assure that discharges to the Ohio River do not cause adverse impacts on its usage by other member states. An analysis of the ORSANCO standards during the triennial review revealed that Kentucky’s water quality standards were either equivalent or more stringent.
- (37) **Subject Matter: Federal Mandate Analysis**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
FFEA requests that the agency provide a response to the Federal Mandate Analysis Comparison, Question 5.
- (b) **Response:** Questions 5 calls for “Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.” The agency responded to question 4 that there are no stricter requirements than those mandated by federal law. KRS 224.10-100 prohibits the agency from developing a program that is more stringent than the federal law, and the Clean Water Act prohibits states from developing a program that is less stringent than federal law.
- (38) **Subject Matter: Potential for lax standards from interstate agencies**
- (a) **Comment: Teena Halbig (Floyds Fork Environmental Association)**
FFEA questions why the Division would allow an interstate agency, like ORSANCO, to set standards, even if they are less stringent.
- (b) **Response:** Section 3(5) states, “in addition to applicable requirements for state permits . . . the requirements of interstate agencies shall be applied. . .”. If there were a less

stringent standard than what Kentucky has in regulation, the Kentucky standard would apply.

Summary of Comments and Responses for 401 KAR 5:080

(39) Subject Matter: KPDES Regulations

(a) Comment: Timothy Hagerty (Kentucky Chamber)

The Kentucky Chamber suggests that the reference to the KPDES regulations as 401 KAR 5:002 – 5:300 in Section 7 is not entirely accurate since that reference would include many non-KPDES regulations.

(b) Response: The agency has amended the introductory sentence of Section 7 to clarify the intent of the application.

(40) Subject Matter: Drafting Suggestion for Section 9(2) and (3)

(a) Comment: Tom FitzGerald (Kentucky Resources Council)

KRC suggests that in Section 9(2) and (3), the phrase “if the cabinet has delegated authority in the federal regulations” be rewritten to state “if the authority to administer the federal regulation cited in Section 1 through 8 of this administrative regulation has been delegated to the cabinet.”

(b) Response: The agency agrees and has made the change.

(41) Subject Matter: Federal Mandate Analysis

(a) Comment: Teena Halbig (Floyds Fork Environmental Association)

Floyds Fork Environmental Association requests that the agency provide a response to the Federal Mandate Analysis Comparison, Question 5.

(b) Response: Question 5 calls for “Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.” The agency responded to question 4 that there are no stricter requirements than those mandated by federal law. KRS 224.10-100 prohibits the agency from developing a program that is more stringent than the federal law, and the Clean Water Act prohibits states from developing a program that is less stringent than federal law.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Division of Water reviewed the comments and, as a result, is amending the administrative regulations as follows:

401 KAR 5:055. Scope and applicability of the KPDES Program.

Page 1

RELATES TO

Line 7

After “144, 300,” insert “401.15”.

Page 1

STATUTORY AUTHORITY

Line 9

After “KRS 224.10-100,”, insert “224.10-110.”

Page 2

NECESSITY, FUNCTION, AND CONFORMITY

Line 2

After “if the permit”, insert “was”.

Delete “were”.

Line 6

After “a KPDES permit”, insert a comma.

Delete the semicolon.

Line 7

After “prohibitions”, insert a comma.

Delete the semicolon.

After “for general permits”, insert a comma.

Delete the semicolon.

Line 8

After “publicly-owned treatment works”, insert a comma.

Delete the semicolon.

Page 2

Section 2(1)

Line 13

After “(1)”, insert the following:

A KPDES permit shall be required

Delete the following:

The KPDES program shall require a permit

Page 2

Section 2(3)

Line 17

After “not relieve a discharger”, insert “whose discharge is”.

Page 2

Section 3(1)(a)

Line 22

After “40 C.F.R. 122”, insert “, effective July 1, 2008”.

Page 3

Section 3(1)(e)

Line 3

After “(e) A”, insert “discharge”.

Delete “discharges”.

Page 3

Section 3(3)(b)

Line 12

After “question whether the”, insert “permit determination”.
Delete “designation”.

Page 3

Section 3(4)(a)

Line 16

After “discharger to submit”, delete “a permit application or”.

Line 17

After “40 C.F.R. 122.21(e),” insert “effective July 1, 2008.”.

Page 4

Section 4(1)

Line 6

After “40 C.F.R. 122.3”, insert the following:
, effective July 1, 2008.

Page 4

Section 4(2)

Line 9

After “Control program;”, delete “and”.

Page 4

Section 4(3)

Lines 11 and 12

After “ground and surface waters”, insert the following:
; or (4) Discharges that are regulated by the U.S. EPA under the Clean Water Act
Section 402, 33 U.S.C. 1342

Page 4

Section 5(1)

Line 14

After “(1) The”, delete “conditions of the”.
After “permit”, insert “would”.

Page 4

Section 5(2)

Line 16

After “40 C.F.R. 123.44”, insert the following:
, effective July 1, 2008

Page 4

Section 5(3)

Line 18

After “interstate agencies,”, insert “or”.
Delete “and all”.

Page 4

Section 5(4)

Line 19

After “40 C.F.R. 122.4”, insert “, effective July 1, 2008”.

Page 4

Section 6(1)

Line 22

After “established in 40”, insert “C.F.R.”.
Delete “CFR”
After “122.21(m),”, insert “effective”.

Page 4

Section 6(2)

Line 23

After “as established in 40”, insert “C.F.R.”.
Delete “CFR”.

Page 5

Section 7

Lines 2 and 3

After “40 C.F.R. 122.5”, insert “, effective July 1, 2008”.

Page 5

Section 8

Line 4

After “40 C.F.R. 122.28”, insert “, effective July 1, 2008”.

Page 5

Section 9(1)

Line 8

After “40 C.F.R. 122.50”, insert “, effective July 1, 2008”.

Page 5

Section 10

Line 13

After “KAR 5:080, Sections”, insert “2”.
Delete “3”.

Page 5

Section 10(2)

Line 20

After “40 C.F.R. 401.15”, insert “, effective July 1, 2008”.

Page 6

Section 11(2)

Lines 9 and 10

After “for “Director” if the”, delete “cabinet has delegated”.

After “authority to”, insert “administer”.

Delete “implement”.

After “this administrative regulation”, insert the following:
has been delegated to the cabinet

Page 6

Section 11(3)

Line 11 and 12

After “for “NPDES” if the”, delete “cabinet has been delegated”.

After “authority to”, insert “administer”.

Delete “implement”.

After “this administrative regulation”, insert the following:
has been delegated to the cabinet

401 KAR 5:060. KPDES application requirements.

Page 1

STATUTORY AUTHORITY

Line 9

After “KRS 224.10-100,”, insert “224.10-110,”

Page 2

Section 2(2)(a)1.

Line 16

After “section, unless excluded”, insert “as established in clauses”.

Delete “in clause”.

Page 2

Section 2(2)(a)1.a.

Line 17

After “40 C.F.R. 122.28”, insert the following:
, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008

Page 2

Section 2(2)(a)1.b.

Line 18

After “40 C.F.R. 122.3”, insert “, effective July 1, 2008”.

Line 19

After “40 C.F.R. 122.44(m)”, insert “, effective July 1, 2008”.

Page 2

Section 2(2)(a)1.c.

Line 21

After “40 C.F.R. 122.44(m)”, insert “, effective July 1, 2008”.

Page 2

Section 2(2)(1)2.

Lines 22 and 23

After “40 C.F.R. 122.44(k)”, insert “, effective July 1, 2008”.

Page 3

Section 2(3)

Lines 4 and 5

After “40 C.F.R. 122.21”, insert the following:
, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70480, November 20, 2008,

Page 3

Section 2(4)

Line 7

After “40 C.F.R. 122.6”, insert “, effective July 1, 2008”.

Page 3

Section 2(5)

Line 9

After “40 C.F.R. 122.23(i)”, insert the following:
, effective July 1, 2008, as amended in the Federal Register, volume 73, Number 225 P70481-70483, November 20, 2008

Page 4

Section 4

Line 3

After “40 C.F.R. 122.22”, insert “, effective July 1, 2008”.

Page 4

Section 5(1)

Line 6

After “40 C.F.R. 122.23”, insert the following:

, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70480-70483, November 20, 2008

Page 4

Section 5(2)

Line 10

After “40 C.F.R. 122.62”, insert the following:

, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008

Page 4

Section 5(3)

Line 12

After “40 C.F.R. 122.42(e)(6)”, insert the following:

, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70484, November 20, 2008,

Line 13

After “40 C.F.R. 122.63”, insert the following:

, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008

Page 4

Section 6

Lines 16 and 17

After “40 C.F.R. 122.24”, insert “, effective July 1, 2008”.

Page 4

Section 7

Line 20

After “40 C.F.R. 122.25”, insert “, effective July 1, 2008”.

Page 4

Section 8

Line 22

After “40 C.F.R. 122.26”, insert “, effective July 1, 2008”.

Page 5

Section 9

Line 1

After “40 C.F.R. 122.27”, insert “, effective July 1, 2008”.

Page 5

Section 10(1)

Line 3

After “40 C.F.R. 122.30”, insert “, effective July 1, 2008”.

Page 5

Section 10(2)

Lines 4 and 5

After “40 C.F.R. 122.32”, insert “, effective July 1, 2008”.

Page 5

Section 10(3)

Line 6

After “40 C.F.R. 122.33”, insert “, effective July 1, 2008”.

Page 5

Section 10(4)

Line 7

After “40 C.F.R. 122.34”, insert “, effective July 1, 2008”.

Page 5

Section 10(5)

Line 9

After “40 C.F.R. 122.35”, insert “, effective July 1, 2008”.

Page 5

Section 11(2)

Lines 13 and 14

After “for “Director” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority to implement

After “this administrative regulation, insert the following:

has been delegated to the cabinet

Page 5

Section 11(3)

Lines 15 and 16

After “for “NPDES” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority to implement

After “this administrative regulation, insert the following:

has been delegated to the cabinet

Page 5

Section 11(4)

Line 17

After “required in Section”, insert “2(2)(b)”.

Delete “1(a)”.

Line 18

After “40 C.F.R. 122.21”, insert “, effective July 1, 2008”.

Page 5

Section 11(5) and (6)

Lines 15 through 18

After “(5)”, delete the following:

(a) “Fecal coliform” shall be modified to “e-coli” in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(b) E-coli shall be measured by grab sample.

(6)

Page 5 and 6

Section 11(6) and (7)

Line 22

After “40 C.F.R. 122.21(r)(1)(ii)”, insert “, effective July 1, 2008”.

Line 23 and 1

After “40 C.F.R. 125.95”, insert “, effective July 1, 2008 . (6)”

Delete “. (7)”.

Page 6

Section 11(7)

Line 2

After “40 C.F.R. 124.62”, insert “, effective July 1, 2008”.

Page 6

Section 12(1)(h)

Line 12

After “KPDES Form”, insert “NDCAFO”

Delete “NCAFO”.

401 KAR 5:065. KPDES permit conditions.

Page 1

STATUTORY AUTHORITY

Line 9

After “KRS 224.10-100,”, insert “224.10-110,”

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 13

After “or deny under”, delete “such”.

Page 2

Section 2(1)

Line 6

After “40 C.F.R. 122.41”, insert “, effective July 1, 2008”.

Page 2
Section 2(2)
Line 7

After “40 C.F.R. 122.42”, insert the following:
, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008

Page 2
Section 2(3)
Line 8

After “40 C.F.R. 122.43” insert “, effective July 1, 2008”.

Page 2
Section 2(4)
Line 9

After “40 C.F.R. 122.44”, insert “, effective July 1, 2008”.

Page 2
Section 2(5)
Line 10

After “40 C.F.R. 122.45”, insert “, effective July 1, 2008”.

Page 2
Section 2(6)
Line 11

After “40 C.F.R. 122”, insert a comma.
After “Appendix A”, insert “, effective July 1, 2008”.

Page 2
Section 2(7)
Line 12

After “40 C.F.R. 129”, insert “, effective July 1, 2008”.

Page 2
Section 2(8)
Line 13

After “40 C.F.R. 136”, insert “, effective July 1, 2008”.

Page 2
Section 2(9)
Line 14

After “40 C.F.R. 401-471”, insert “, effective July 1, 2008”.

Page 2

Section 2(10)

Line 15

After “40 C.F.R. 503”, insert “, effective July 1, 2008”.

Page 2

Section 3(2)

Lines 19 and 20

After “for “Director” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority to implement

After “this administrative regulation”, insert the following:

has been delegated to the cabinet

Page 2

Section 3(3)

Lines 21 and 22

After “for “NPDES” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority to implement

After “this administrative regulation”, insert the following:

has been delegated to the cabinet

Pages 2 and 3

Section 3(4)

Lines 23 through 2

After “(4)”, strike the following:

The penalties established in KRS 224.99-010 shall be substitutes for the penalties established in 40 C.F.R. 122.41(a)(2).

(5)

Page 3

Section 3(5)

Lines 2 and 3

After “40 C.F.R. 122.43(b)(1)”, insert “, effective July 1, 2008”.

Line 3

After “agencies shall be”, insert “considered in”.

Delete “applied to”.

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

Page 1

RELATES TO

Line 9

After “224.10-100,” insert “224.10-110”.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 13

After “or deny under”, delete “such”.

Page 2

Section 2(1)

Line 6

After “40 C.F.R. 125.1”, insert “, effective July 1, 2008”.

Page 2

Section 2(2)

Line 7

After “40 C.F.R. 125.2”, insert “, effective July 1, 2008”.

Page 2

Section 2(3)

Line 8

After “40 C.F.R. 125”, insert “, effective July 1, 2008”.

Page 2

Section 3(1)

Line 10

After “40 C.F.R. 125.10”, insert “, effective July 1, 2008”.

Page 2

Section 3(2)

Line 11

After “40 C.F.R. 125.11”, insert “, effective July 1, 2008”.

Page 2

Section 4(1)

Line 14

After “40 C.F.R. 125.30”, insert “, effective July 1, 2008”.

Page 2

Section 4(2)

Line 15

After “40 C.F.R. 125.31” insert “, effective July 1, 2008”.

Page 2

Section 4(3)

Line 16

After “40 C.F.R. 125.32”, insert “, effective July 1, 2008”.

Page 2

Section 5(1)

Line 19

After “40 C.F.R. 125.70” insert “, effective July 1, 2008”.

Page 2

Section 5(2)

Line 19

After “40 C.F.R. 125.71” insert “, effective July 1, 2008”.

Page 2

Section 5(3)

Line 19

After “40 C.F.R. 125.72” insert “, effective July 1, 2008”.

Page 2

Section 5(4)

Line 19

After “40 C.F.R. 125.73” insert “, effective July 1, 2008”.

Page 3

Section 6

Line 1

After “40 C.F.R. 122.29”, insert “, effective July 1, 2008”.

Page 22

Section 7

Lines 1 and 2

After “References throughout”, insert “401 KAR Chapter 5”.

Delete the following:

the KPDES administrative regulations, 401 KAR 5:002 through 5:300,

Page 22

Section 7(16)

Lines 21

After “Chloroalkyl ethers (”, insert “including”.

Page 22

Section 7(18)

Line 23

After “those listed elsewhere;”, insert “including”.
Delete “includes”.

Page 23

Section 7(25)

Line 8

After “Dichlorobenzenes (”, insert “including”.

Page 23

Section 7(27)

Line 10

After “Dichloroethylenes (”, insert “including”.

Page 23

Section 7(37)

Line 20

After “listed elsewhere;”, insert “including”.
Delete “includes”.

Line 21

After “methane”, insert a comma.

Page 23

Section 7(38)

Line 23

After “listed elsewhere;”, insert “including”.
Delete “includes”.

Page 24

Section 7(38)

Line 1

After “trichlorofluoromethane,”, insert “and”.

Page 24

Section 7(49)

Line 13

After “dinitrophenol”, insert “and”.
Delete the comma.

Page 25

Section 8(1)

Line 11

After “40 C.F.R. 133.100”, insert “, effective July 1, 2008”.

Page 25

Section 8(2)

Line 11

After “40 C.F.R. 133.101”, insert “, effective July 1, 2008”.

Page 25

Section 8(3)

Line 11

After “40 C.F.R. 133.102”, insert “, effective July 1, 2008”.

Page 25

Section 8(4)

Line 11

After “40 C.F.R. 133.103”, insert “, effective July 1, 2008”.

Page 25

Section 8(5)

Line 11

After “40 C.F.R. 133.104”, insert “, effective July 1, 2008”.

Page 25

Section 8(6)

Line 11

After “40 C.F.R. 133.105”, insert “, effective July 1, 2008”.

Page 25

Section 9(2)

Lines 20 and 21

After “to “cabinet” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority in

After “this administrative regulation”, insert the following:

has been delegated to the cabinet

Page 25

Section 9(3)

Lines 22 and 23

After “to “KPDES” if the”, insert “authority to administer”.

Delete the following:

cabinet has delegated authority in

After “this administrative regulation”, insert the following:

has been delegated to the cabinet

Page 26

Section 9(4)

Line 2

After “40 C.F.R. 125.72(d)”, insert “, effective July 1, 2008”.